

STATE OF MICHIGAN
COURT OF APPEALS

In re CAMPBELL ESTATE.

ROSENA MILAM, Personal Representative of the
ESTATE OF BILLY H. CAMPBELL, Deceased.

UNPUBLISHED
July 28, 2005

Petitioner-Appellee,

v

LAURIE LESTER and DONNA KELLUMS,

No. 253215
Iosco Probate Court
LC No. 03-000632-DA

Respondents-Appellants.

Before: Borrello, P.J. and Bandstra and Kelly, JJ.

MEMORANDUM.

Respondents appeal as of right an order entered following a jury trial admitting the decedent's will to probate. We affirm.

Respondents argue that the trial court erred in excluding their handwriting expert's testimony on the authenticity of the decedent's signature because their pleadings did not allege forgery. They argue that they were not required to allege forgery in their pleadings to contest the validity of the signature before the court. Respondents claim that because they repeatedly challenged the validity of the will, the authenticity of the signature was at issue and the trial court violated their rights in excluding the expert testimony.

We review a lower court's decision to exclude evidence for an abuse of discretion. *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001). An abuse of discretion occurs if the trial court's decision "is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Id.*

The right to contest a will is "purely statutory and can be exercised only in accordance with and within the limitations prescribed by statute." *Utley v First Congregational Church of Detroit*, 368 Mich 90, 104; 117 NW2d 141 (1962), quoting *In re Meredith's Estate*, 275 Mich 278, 292; 266 NW 351 (1936). A party "who opposes the probate of a will for any reason shall state in his or her pleadings the party's objections to probate of the will." MCL 700.3404. The proponent of a will "has the burden of establishing prima facie proof of due execution"

MCL 700.3407(1)(b). Generally, under MCL 700.2502(1), this includes a showing that the will is in writing, signed by the testator, and signed by a minimum of two witnesses. In contrast, persons contesting the admission of a will to probate bear “the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation.” MCL 700.3407(1)(c).

In their pleadings, respondents did not object to probating the will on the basis that the will bore a fraudulent signature. Rather than alleging forgery, they asserted that the will was the product of coercion and undue influence or that the decedent did not have testamentary capacity at the time of execution. Respondents specifically conceded that the decedent himself signed the instrument, but argued that he did so due to improper influences or at a time when he could not comprehend the significance of his actions. Under MCL 700.3404, to contest the will on the basis of forgery, respondents were required to allege forgery in their objection. Because they failed to do this, the trial court did not abuse its discretion in excluding expert testimony on this issue.

Affirmed.

/s/ Stephen L. Borrello
/s/ Richard A. Bandstra
/s/ Kirsten Frank Kelly